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Text Amendment Application No. 104
Boston Redevelopment Authority
Development Impact Project
Regulations - Housing

TEXT AMENDMENT NO. 80
THE COMMONWEALTH OF MASSACHUSETTS
CITY OF BOSTON
IN ZONING COMMISSION

EFFECTIVE
February 27, 1986†

The Zoning Commission of the City of Boston, acting under Chapter 665 of the Acts of 1956 as amended, after due report, notice and hearing does hereby amend the Boston Zoning Code as follows:

A. By inserting, after Article 26 of said Code, the following article:

ARTICLE 26A

DEVELOPMENT IMPACT PROJECTS - HOUSING

SECTION 26A-1. Statement of Purpose. The purpose of this article is to promote the public health, safety, convenience and welfare; to prevent overcrowding and deterioration of existing housing; to preserve and increase the City's housing stock; to establish a balance between new, large-scale real estate development and the housing needs of the City; and to mitigate the impacts of large-scale development on the available supply of low and moderate income housing, by provisions designed to:

1. Afford review and regulation of large-scale real estate development projects which directly or indirectly displace low or moderate income residents from housing units or contribute to an increase in the costs of housing.
2. Increase the availability of low and moderate income housing by requiring developers, as a condition of the grant of deviations from the Zoning Code or the grant of an amendment to the zoning map or text, to create low and moderate income housing or to make a housing contribution grant to the Neighborhood Housing Trust ("Trust").

SECTION 26A-2. Definitions.

1. "Development Impact Project", any development in the City in which it is proposed to erect a structure or structures having a total gross floor area (exclusive of all accessory parking garage space) in excess of one hundred thousand (100,000) square feet or to enlarge or extend a structure or structures so as to increase its (or their) gross floor area

†Date of public notice: February 13, 1986 (see St. 1956, c. 665, s. 5).

(exclusive of all accessory parking garage space) by more than one hundred thousand (100,000) square feet or to substantially rehabilitate a structure or structures having, or to have, after rehabilitation, a gross floor area (exclusive of all accessory parking garage space) of more than one hundred thousand (100,000) square feet; which structure or structures is (are) intended for a use for which the use item number is listed in Table D, Section 26A-3(2)(a), or, for a use for which the use item number is not listed if such Project will directly result in a reduction in the supply of low and moderate income dwelling units as determined by the Boston Redevelopment Authority ("Authority") and which Project requires a variance, conditional use permit, exception, or zoning map or text amendment.

2. "Development Impact Project Plan", a plan for a project which is a Development Impact Project. The Plan shall set forth the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the structure or structures, densities, projected number of employees, proposed traffic circulation, parking and loading facilities, access to public transportation, and proposed dimensions of structures, and may include proposed building elevations, schematic layout drawings and exterior building materials, the neighborhood where the Project is located and the adjacent neighborhoods, and such other matters as the Director of the Authority deems appropriate to his consideration of the proposed construction.
3. "Development Impact Project Contribution", the creation, by the Project applicant, of low and moderate income housing units by means of the Housing Creation Option, or the grant and payment of a sum of money by the Project applicant by means of the Housing Contribution Option calculated according to the formula as set forth in Section 26A-3(2), to and for the exclusive benefit of the Neighborhood Housing Trust.
 - (a) The Housing Creation Option shall be met by creating or causing to be created housing units, for occupancy exclusively by low and moderate income residents of the City, at a cost at least equivalent to the amount of the Housing Contribution Grant, and in conformity with written regulations to be adopted by the Authority after public notice and hearing. The actual Housing Creation Contribution may be approved by the Authority only after public notice and hearing.
 - (b) The Housing Contribution Grant shall be made to the Neighborhood Housing Trust in seven (7) equal, annual installments, the first installment due upon the issuance of a building permit. The remaining six (6) payments of the Grant shall be due and payable annually on the anniversary of the first payment. All payments constituting the Housing Contribution Grant shall be made to the Collector-Treasurer of the City as custodian pending acceptance of such payments for the Trust by the City. Any payments made by the Project applicant to the Neighborhood Housing Trust, on account of the Housing Contribution Option, shall be credited against any amounts due to said Trust on account of any neighborhood impact excise which may be assessed by the City.

- (c) Ten percent (10%) of any Housing Contribution Grant made for projects located in the area lying within the boundaries set forth in Section 26A-4 and twenty percent (20%) of any Housing Contribution Grant made for projects located in areas lying outside of these boundaries shall be reserved for the neighborhood or neighborhoods where or adjacent to where the Project is located ("impacted neighborhood") as defined in the approved Development Impact Project Plan, provided that the Neighborhood Housing Trust finds that in the targeted area proposals for feasible housing projects can be developed.
4. "Substantially rehabilitate", to cause alterations or repairs to be made, to a structure or structures, costing in excess of fifty percent (50%) of the physical value of the structure or structures. Physical value of a structure or structures shall be based on the assessed value as recorded on the assessment rolls of the City as of the January 1 preceding the date of the application for Development Impact Project Plan approval.
 5. "Neighborhood Housing Trust", a Massachusetts public charitable trust created under the laws of the Commonwealth on November 19, 1985 and administered by the Collector-Treasurer of the City as managing trustee or another trust, if passed by the Council and approved by the Mayor.
 6. "Public agency", a department, agency, board, commission, authority, or other instrumentality of the Commonwealth, or of one or more political subdivision(s) of the Commonwealth or of the United States.
 7. "Low and moderate income residents", households located in the city whose total annual income is not more than eighty percent (80%) of the median income for the Boston area as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to the Housing and Community Development Act of 1974, as amended.

SECTION 26A-3. Development Impact Project Requirements. No variance, conditional use permit, exception or zoning map or text amendment for a Development Impact Project shall be granted or adopted unless the following requirements are met:

1. The Authority, after a public meeting, shall have approved a Development Impact Project Plan. No Plan shall be approved by the Authority unless the Authority finds that the Plan conforms to the general plan for the City as a whole and that nothing in such Plan will be injurious to the neighborhood or otherwise detrimental to the public welfare; and
2. The person or persons making application for a variance, conditional use permit, exception or zoning map or text amendment to erect, substantially rehabilitate, enlarge, or extend a structure pursuant to a Development Impact Project Plan shall also have entered into an agreement with the Authority to make a Development Impact Project Contribution.

- (a) For each use listed below, in Table D, a Housing Contribution Grant of five dollars (\$5.00) for each square foot of gross floor area in excess of one hundred thousand (100,000) square feet, shall be required. Uses, other than accessory parking, that are ancillary or accessory to the uses listed in Table D shall also be subject to the Housing Contribution Grant requirement.

TABLE D: Development Impact Uses

<u>Use</u>	<u>Use Item Numbers</u>
Office	39, 39A, 40, 41, 42
Retail Business and Service	30, 31, 32, 34, 34A, 35, 36, 36A, 37, 37A, 38, 38A, 43, 44, 45, 46, 47, 48, 49, 60, 60A, 61
Institutional and Educational	16, 16A, 18, 19, 20, 20A, 21, 22, 22A, 23, 24, 29
Hotel and Motel, but not including Apartment Hotel	15

- (b) For mixed-use structures in which one or more of the above uses are combined, the above requirements shall apply if the gross floor area devoted to any one or more of the uses shall in the aggregate exceed one hundred thousand (100,000) square feet.
- (c) The formula (amount and rate of payment) for the Housing Contribution Grant for the use categories listed in Table D shall be subject to recalculation three (3) years after the effective date of this provision and every three (3) years thereafter. The Authority, after public notice and public hearing, when appropriate shall make a recommendation to the Zoning Commission to amend the formula for the Housing Contribution Grant, based on a consideration of the following criteria:
- (i) Economic trends measured in terms including but not limited to development activity, commercial rents per square foot, employment growth, and inflation rates.
 - (ii) Housing trends measured in terms of, including but not limited to, vacancy rates for low and moderate income housing, and production statistics for new dwelling units.
- (d) The Commissioner of Inspectional Services shall not issue any building or use permit with respect to any building, structure, or land within an area covered by a Development Impact Project Plan, unless the Director of the Authority has certified on the application

therefor, and on each plan, drawing or specification filed with the Commissioner in connection therewith, that the plans have been subject to design review, and that the plans are consistent with the Authority-approved Development Impact Project Plan and that the applicant has entered into an agreement with the Authority, as provided in Sections 26A-2(3) and 26A-3(2).

3. The following are not Development Impact Projects and will not be subject to the Development Impact Project requirements:
 - (a) Any structure for which a building or use permit is lawfully issued before notice of hearing before the Zoning Commission has first been given respecting adoption of Article 26A, provided that construction work under such a permit is commenced within six months after its issue, and the work proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances;
 - (b) Any structure for which construction or permanent financing has been secured before notice of hearing before the Zoning Commission has first been given respecting Article 26A, as evidenced by an irrevocable written commitment of a lending institution or a recorded mortgage indenture, and by the borrower's bona fide payment of a loan commitment fee; or
 - (c) Any building or structure which is, or will be, wholly-owned by one or more public agencies.
4. Article 26A supplements and does not repeal Article 26, which shall continue to apply to Development Impact Project Plans that were approved pursuant to Article 26. Development Impact Project Plans approved pursuant to Article 26 prior to the effective date of Article 26A shall not be subject to the requirements of Article 26A.

SECTION 26A-4. Applicability. The rate of payment set forth in Section 26A-2(3)(b) shall only apply to Development Impact Projects located in an area lying within the boundaries set forth below:

Beginning at the intersection of the southern bank of the Charles River and the centerline of Massachusetts Avenue and running southerly and southeasterly along the centerline of Massachusetts Avenue to the intersection with the centerline of Tremont Street;

Thence running northeasterly along the centerline of Tremont Street to the centerline of East Berkeley Street;

Thence running easterly along the centerline of East Berkeley Street and the West Fourth Street Bridge to the intersection with the centerline of Dorchester Avenue;

Thence running northerly along the centerline of old Dorchester Avenue to the intersection with the edge of land on the northwesterly side of Fort Point Channel;

Thence running northeasterly along the water's edge or the U.S. Pierhead Line, whichever shall be more inclusive, to the Metropolitan District Commission Dam at the mouth of the Charles River;

Thence running across the southerly side of the Metropolitan District Commission Dam and along the southerly bank of the Charles River to the beginning point at the intersection thereof with the centerline of Massachusetts Avenue.

The rate of payment set forth in Section 26-2(3)(a) shall apply to Development Impact Projects located in all other areas of the City. Section 26-2(3)(a) provides in relevant part that:

The Housing Contribution Grant shall be made to the Neighborhood Housing Trust in twelve (12) equal, annual installments, the first installment due upon the issuance of a certificate of occupancy for the Project building or twenty-four (24) months after the granting of the building permit, whichever comes first. The remaining eleven (11) payments shall be due and payable annually on the anniversary of the first payment.

Where the boundary described above divides a Development Impact Project, the rate of payment set forth in Section 26A-2(3)(b) shall apply. Use item numbers 11, 12, 13, 13A, 14 and 17 shall be exempt from the provisions of Articles 26 and 26A.

SECTION 26A-5. Severability. The provisions of this Article are severable, and if any such provision or provisions shall be ruled invalid by any decision of court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

- B. By adding, in Section 6-3(f), after "Section 26-2," the phrase "26A-2 or 26B-2," and after "Section 26-3" deleting the period and adding the phrase "or 26A-3 and in Section 26B-3."
- C. By adding, in Section 6A-3(c), after "Section 26-2," the phrase "26A-2 or 26B-2," and after "Section 26-3" deleting the period and adding the phrase "or 26A-3 and in Section 26B-3."
- D. By adding, in Section 7-3(d), after "Section 26-2," the phrase "26A-2 or 26B-2," and after "Section 26-3," deleting the comma and adding the phrase "or 26A-3 and in Section 26B-3,".

Richard B. Taylor

Chairman

Vice Chairman

Alfred

Only in Watson

Ana M. Perez

James H. De Vries

Robert Anderson

Joseph. W. Joyce

In Zoning Commission

Adopted: February 26, 1986

Attest:

Marguerite Hildebrand
Secretary

~~Secretary~~

Mayor, City of Boston

Date: February 27, 1986

The foregoing amendment was presented to the Mayor on February 27, 1986, and was signed by him on February 27, 1986, whereupon it became effective on February 27, 1986, in accordance with the provisions of Section 3 of Chapter 665 of the Acts of 1956.

Attest:

Urogeometre Phila Good
Secretary

Secretary

